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No. 87-2023

Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1988

THOMAS LEE CHRISTIANSEN, ET UX., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENT

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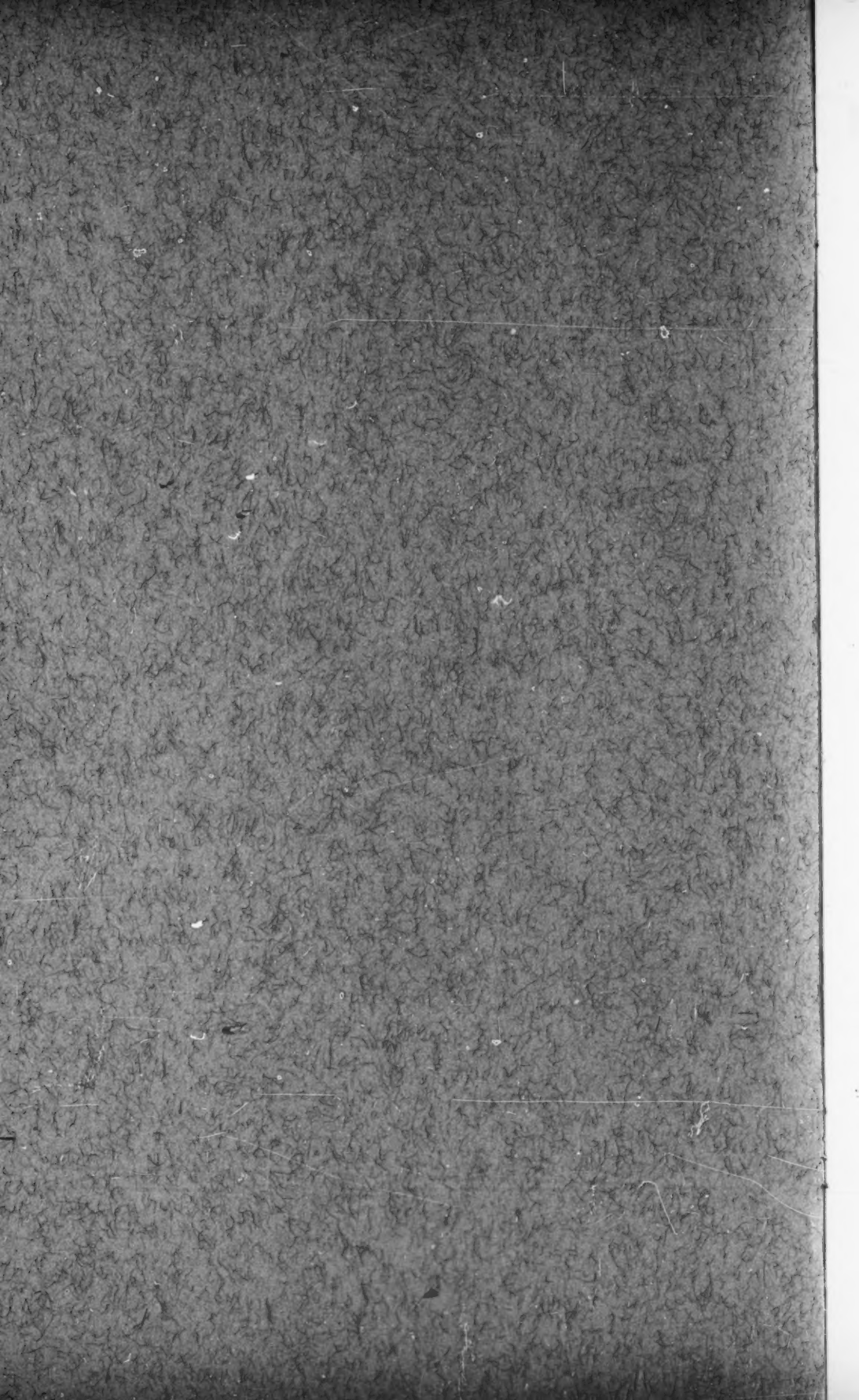
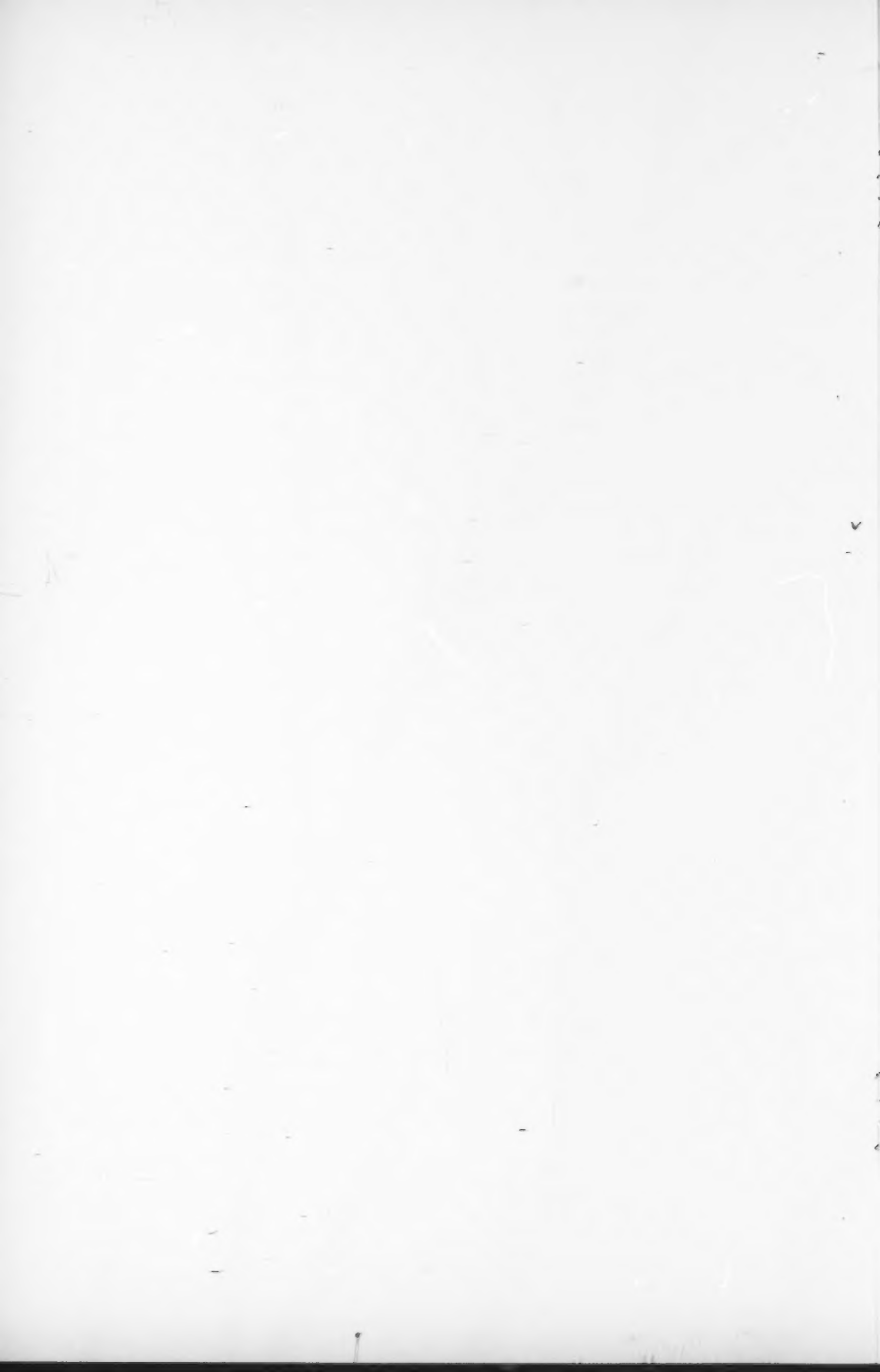


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Petitioners contend that their payments to the Church of Scientology for auditing or training sessions are deductible from taxable income as "contribution[s] or gift[s]" under Section 170 of the Internal Revenue Code.¹

1. Petitioners made payments to a branch of the Church of Scientology in 1975, 1976, and 1977, and claimed those payments as charitable deductions on their joint federal income tax returns under Section 170 of the Code, which permits a deduction for a "contribution or gift" to certain eligible donees (see I.R.C. § 170(c)). On audit, the Commissioner disallowed those deductions and determined tax deficiencies of \$171 for 1975, \$914 for 1976, and \$306 for 1977. Pet. App. 2a. Petitioners filed a petition in the Tax Court for review of the Commissioner's

¹ Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

determination. There was no trial in the Tax Court, however, nor any other evidentiary submission. Instead, the parties entered into a stipulation to be bound by "any relevant findings of fact and conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in three consolidated "test cases" that were to be tried. The stipulation further provided that the record in the test cases, "to the extent relevant," would be deemed part of the record in this case for the purpose of appeal. See *id.* at 2a, 20a-21a.² After the Tax Court decided the "test cases" in favor of the Commissioner (*Graham v. Commissioner*, 83 T.C. 575 (1984), *aff'd*, 822 F.2d 844 (9th Cir. 1987), *cert. granted*, No. 87-1616 (May 23, 1988) (*reprinted at* Pet. App. 23a-33a)), the court entered a decision and order in the instant case "on the authority of *Graham*," finding deficiencies in the amount determined by the Commissioner (Pet. App. 22a).

2. In the *Graham* case, the Tax Court entered findings of fact pertaining to the general operation of the Church of Scientology. Like petitioners, the taxpayers in *Graham* had made payments to a branch of the Church of Scientology³ and had sought to deduct them on their income tax returns as charitable contributions (Pet. App. 27a-28a). These payments were made in exchange for "auditing" and "training" services provided by the Church. Scientologists believe that auditing helps an individual to achieve a higher level of "spiritual competence." Auditing is admin-

² The government entered into the same stipulation with numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of a charitable deduction for payments to the Church of Scientology.

³ The Church of Scientology consists both of a central branch, the "mother" Church of Scientology of California, and of numerous branches that are separate entities for tax purposes.

istered in a one-to-one session by a trained Scientologist who asks the auditee questions and measures his skin responses during the session by means of an electronic device. "Training" courses study the doctrines of Scientology and are believed to yield further spiritual benefits. See *id.* at 25a.

The Church charges a "fixed donation" for training and auditing, which is almost never waived.⁴ The Church "operates in a commercial manner" in providing these services (Pet. App. 27a). It promotes its services through lectures and radio and newspaper advertising. It gives a standard discount for payments made well in advance of the services to be rendered, and it issues refunds of those payments if the services ultimately are not received. *Id.* at 26a-27a.

After making these factual findings, the Tax Court in *Graham* ruled that the payments in question were not contributions, but rather were non-deductible payments made to purchase services (Pet. App. 28a-30a). The court explained that the payments "were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return" (*id.* at 30a). The court continued (*ibid.*): "[W]here contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo." The court also rejected the contention that the denial of the deduction violated the First Amendment (*id.* at 30a-33a).

3. In the present case, the court of appeals affirmed the Tax Court's decision in the Commissioner's favor that

⁴ Indeed, the Church's official policy letter states that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 26a n.6). Free services are awarded only to fully contracted staff, on the condition that the staff member fulfill the terms of his contract (*ibid.*).

had been entered on the authority of *Graham* (Pet. App. 1a-6a). The court held that the payments did not qualify as contributions under Section 170 (Pet. App. 3a-6a), finding that "examination of the structure of these payments clearly reveals that they were made on a quid pro quo basis for services" (*id.* at 6a). The court also rejected petitioners' contention that denial of a charitable deduction for their payments to the Church violated the First Amendment (*ibid.*).

4. The questions presented in this case are identical to those presented in the consolidated cases of *Hernandez v. Commissioner*, cert. granted, No. 87-963 (Apr. 18, 1988), and *Graham v. Commissioner*, cert. granted, No. 87-1616 (May 23, 1988), where the taxpayers, like petitioners, are seeking to take a charitable deduction for payments made to the Church of Scientology. *Hernandez* is another of the cases that was decided in the Tax Court on the basis of a stipulation to adopt the findings of fact in the *Graham* case (see note 2, *supra*). Accordingly, it would be appropriate for the Court to hold this case pending the disposition of *Hernandez* and *Graham*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be disposed of as appropriate in light of this Court's decision in *Hernandez v. Commissioner*, No. 87-963, and *Graham v. Commissioner*, No. 87-1616.

CHARLES FRIED
Solicitor General

AUGUST 1988

